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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,261	01/19/2004	William Freeman	15436.121.1.1	6915

22913 7590 07/16/2007

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EXAMINER	
BLACKWELL, GWENDOLYN ANNETTE	
ART UNIT	**PAPER NUMBER**
1775	

MAIL DATE	DELIVERY MODE
07/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/759,261	FREEMAN ET AL.	
	Examiner	Art Unit	
	Gwendolyn Blackwell	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 May 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-11 and 16-26* is/are pending in the application.

4a) Of the above claim(s) *16-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 7-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 3, 2007 has been entered.

Election/Restrictions

2. Newly submitted claims 25-26 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the pending claims and the new claims are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product, and the species are patentably distinct (MPEP § 806.05(j)). In the instant case, the intermediate product is deemed to be useful as architectural glazing and the inventions are deemed patentably distinct because there is nothing on this record to show them to be obvious variants.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 25-26 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5, and 7-10, are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent no. 5,668,663, Varaprasad et al.

Regarding claims 1 and 8

Varaprasad et al disclose an electrochromic device, such as a window (column 1, lines 6-11) comprised of first and second substrates positioned in a spaced apart relationship being substantially parallel. First and second conductive electrodes are positioned on the inner surfaces (the surfaces that face each other) of the first and second substrates, (columns 13-14, lines 45-41). Between the conductive electrodes, an electrochromic material layer and an electrolyte material layer (the combined electrochromic layer/electrolyte layer form Applicant's attenuation layer) are formed, (column 7, lines 53-64). The electrolyte material is comprised of redox reaction promotors and alkali ions and/or protons wherein one of the alkali ions may be lithium methacrylate (photopolymerizable element), (columns 8-10, lines 56-58), meeting the limitations of claims 1 and 8.

Regarding claims 2-3, 5, 7, and 9-10

The substrates can be formed of glass, (column 13, lines 26-41), meeting the limitations of claims 2 and 9.

The electrodes and glass substrates are transparent and transmissive in part in the visible portion of the electromagnetic spectrum, (column 15, lines 6-65), meeting the limitations of claims 3 and 10.

As light passes through the electrolyte layer, a portion of the electromagnetic spectrum is absorbed (attenuated), (columns 11-12, lines 61-8), meeting the limitations of claim 5.

The electrochromic/electrolyte layers are activated by an applied potential between the conductive electrode coatings by any source of an alternating current or a direct current (voltage), (column 23, lines 39-49), meeting the limitations of claim 7.

5. Claims 1-5 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent no. 6,193,378, Tonar et al.

Regarding claims 1, 4, 8, and 11

Tonar et al disclose an electrochromic device that can be a window, (column 11, lines 47-50 and column 12, lines 53-57). The device is comprised of first and second substrates with a first electrode on the inner surface of the first substrate and a second electrode on the inner surface of the second substrates wherein the two substrates are in a spaced apart relationship with an electrochromic element formed between the two electrodes, (column 3, lines 38-67). The electrochromic element is comprised of an electrolyte and an electrochromic medium, (column 4, lines 46-67). The example demonstrates that the electrochromic medium also contains polymethylmethacrylate (photopolymerizable monomer), (column 10, lines 32-37),

Regarding claims 2-3, 5, 7, and 9-10

The substrates are made of glass, (column 10, lines 17-24), meeting the limitations of claims 2 and 9.

The conductive electrodes are transparent, which would allow for the transmission of at least a portion of visible light, (column 3, lines 57-65), meeting the limitations of claims 3 and 10.

As the prior art meets the layer structure as set forth by Applicant in claim 5, it would be expected that the structure of Tonar et al would meet the physical limitations as set forth in claim 5, absent an objective showing to the contrary.

The reflectivity of electrochromic element is activated through the use of an applied voltage, (column 3, lines 37-41), meeting the limitations of claim 7.

Response to Arguments

6. Applicant's arguments filed May 3, 2007 have been fully considered but they are not persuasive.

7. Applicant contends (1) that the Varaprasad et al does not teach or suggest the limitations of claims 1 and 8, and (2) that Tonar et al does not teach or suggest the limitations of claims 1 and 8.

With regards to contention (1), Applicant's interpretation of the Examiner's interpretation of the attenuation layer is correct. Varaprasad et al is still considered pertinent prior art because there is nothing to say that photopolymerizable element in the electrolyte would not help to increase the bonding of the electrolyte and electrochromic material layers.

With regards to contention (2), Tonar et al is still considered pertinent prior art because there is nothing to say that photopolymerizable element in the electrolyte would not help to increase the bonding of the electrolyte and electrochromic material layers.

8. For the reasons set forth above, the rejection stands.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Blackwell whose telephone number is (571) 272-1533. The examiner can normally be reached on Monday - Thursday; 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gwendolyn Blackwell
Examiner
Art Unit 1775